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January 19, 2005

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Federal Communications Commission
Office of Secretary

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, DC 20554

RE: NASUCA's Petition, CG Docket No. 04-208
EX PARTE

Dear Ms. Dortch:

On January 18, 2005, Beth Swett, Michael Wayne Bennett and the undersigned, all of Cingular Wireless, met with Jay Keithley, Deputy Chief-Consumer and Government Affairs Bureau (CGB) and other members of CGB including Erica H. McMahon, Gene Fullano, Michael J. Jacobs and Richard Smith, to discuss issues related to the referenced docket proceeding. The attached document was used for discussion purposes.

Pursuant to Section 1.1206 of the Commission's Rules, this notification is being submitted to your Office. Please associate this notification and accompanying material with the referenced docket proceeding.

If you have any questions concerning this submission, please contact the undersigned.

Sincerely,



Ben G. Almond
Vice President-Federal Regulatory Affairs
Cingular Wireless

Attachment

Cc: Jay Keithley
Erica H. McMahon
Gene Fullano
Michael J. Jacobs
Richard Smith

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Cingular Wireless
NASUCA Petition
CG Docket No. 04-208

NASUCA requests that the FCC prohibit the use of monthly line item charges by CMRS carriers for the recovery of regulatory compliance costs. NASUCA further alleges that such line item charges are unreasonable, unauthorized, misleading and deceptive.

Cingular Position:

The FCC has already considered and provided CMRS carriers the flexibility to recover regulatory costs, including the use of line item charges. Thus, the requested petition should be denied.

- The Commission provided CMRS carriers the flexibility to use line item charges in its Truth in Billing (TIB) Order.
- The Commission affirmed this decision in its Contribution Order and Local Number Portability Orders.
- NASUCA petition provides no justification to overturn the FCC's prior determination

The FCC provided appropriate flexibility to carriers for recovering costs.

- Customers have access to accurate information regarding their charges.
- Carriers have ability to recover the costs of compliance with governmental requirements.
- Line item charges serve a practical purpose by providing carriers flexibility to address uncertain and changing costs of regulatory compliance. Regulatory compliance costs may vary depending upon variety of factors, including geographic area, volume, timing of implementation, and addition of new requirements.
- Without such flexibility, CMRS carriers may not be able to offer uniform national one-rate plans.
- Line item charges are consistent with a carrier's constitutional right to let consumers know the cause of these costs.
- If the Commission finds that varying labels, descriptions or differing amounts charged by carriers might confuse consumers, it should conclude its pending proceeding on the use of standardized labels.

Cingular's practices and line item charges comply with Commission rules and TIB guidelines.

- Cingular provides consumers with full, accurate and non-misleading information throughout all phases of the business relationship.
- Cingular follows the CTIA Consumer Code for Wireless services.

- Cingular follows FCC guidance regarding labels and practices in describing regulatory cost recovery charges on its bill even though FCC has not yet prescribed standardized labels. For example, the Commission prohibited carriers from describing fees as “mandated” or implying that they have no choice in assessing the charge or the amount of the charge.
- In compliance with the Consumer Code and the TIB principles, Cingular clearly informs consumers about its charges, including charges for recovery of costs associated with regulatory requirements.
 - Cingular clearly discloses information about its Regulatory Cost Recovery Fee in advertising, rate plan brochures, and its agreements,
 - Cingular has implemented a program to provide new customers with a Cingular Service Summary at the point of sale which, among other important disclosures, provides the customer with an estimate of their first month's bill and an estimate of an ongoing bill.
 - The sample bill in the Cingular Service Summary include estimates for the Regulatory Cost Recovery Fee, the Federal Universal Service Fund Fee, applicable State Universal Service Fund Fee, and other charges fees based on where the customer's billing address.
 - Prior to implementing the Regulatory Cost Recovery Fee, Cingular provided notice in each affected customer's bill.
- Cingular's Regulatory Cost Recovery Fee is reasonable and not excessive.
- Cingular is currently reviewing the impact of the merger on the costs recovered by the Regulatory Cost Recovery Fee.
 - New Cingular customers and customers migrating from AWS to Cingular plans will be covered by Cingular cost recovery procedures.
 - Existing customers under current AWS pricing plans will continue to be charged the current AWS recovery rate.
 - Cingular is currently reviewing regulatory costs of both companies to determine if existing Regulatory Cost Recovery fee should be adjusted.

Other

Cingular is providing the following in response to specific questions from the FCC regarding charges on its bills.

How does Cingular categorize and describe charges it assesses for governmental requirements on its bill?

Cingular separates charges caused by governmental action in two sections of its bill. Cingular lists all non-discretionary charges (charges for which the federal or state government has mandated that Cingular must pass on to its customers) in the “Government Fees and Taxes” section of its bill. This section contains the

federal Excise Tax, State and Local Taxes, as well as mandated 911 surcharges. Cingular collects the mandated amount from its customers and pays it to designated regulatory agency.

In a separate section on its bill described as "Credits, Adjustments & Other Charges, Cingular lists other line item charges it uses to defray costs for complying with other regulatory requirements. This separation in the bill clearly shows that Cingular is **not** characterizing these charges as a tax or a required charge. Rather, Cingular is choosing to recover these costs through these line items. These discretionary charges include charges for the Federal Universal Service Fund, the Regulatory Cost Recovery Fee and other charges.

Why does Cingular include charges for Activation and other service-related charges in the same section of the bill ("Credits, Adjustment & Other Charges") where these discretionary charges for regulatory requirements are listed?

The "Credits, Adjustment & Other Charges" section best describes these type of charges, such as handset charges and other non-recurring or initial activation charges related to Cingular's service that may appear on the customer's first bill or periodically during the contract period. Other sections in the bill include recurring Monthly Charges associated with the customer's rate plan and Optional Services, Usage Charges, and Taxes. Creating an additional section just for these type charges would be inefficient and make the bill even longer especially since most of these non-recurring charges would not appear again after the first bill.

Why does Cingular use separate line items to recover the cost for the Federal Universal Fund and the Regulatory Cost Recovery Fee.

The FCC provided CMRS carriers flexibility in recovering costs of regulatory requirements but has also provided certain guidance in this recovery. Cingular has chosen to separate these charges to reflect this guidance.

The FCC has been assessing carriers for the Universal Service Fund ("USF") since 1998 and Cingular has been recovering this charge in accordance with FCC rules and guidance since then. The FCC assesses each carrier based on a percentage of its interstate and international end user telecommunications revenues. This assessment is changed quarterly – the assessment was recently increased to more than 10%!

Beginning in 2003, the FCC expressly required that carriers not recover from customers, via end-user line item charges, an amount that is greater than that FCC-imposed percentage multiplied by the interstate telecommunications portion of the customer's bill. (Cingular determines its interstate telecommunications portion using the "safe harbor" percentage applied to all of its

telecommunications revenues.) Thus, Cingular is now recovering this cost from customers through a FCC-mandated, percentage-based assessment of the customer's billed charges to assure it meets this new requirement. Further, the Universal Service requirement will be an ongoing, substantial assessment imposed by the FCC. Cingular can better notify customers of the reason for this charge and highlight the changes to this fee through a separate line item on the bill.

Carrier recovery of other non-USF program contribution costs is not subject to these restrictions, but to more flexible requirements. Cingular has opted to defray the costs of certain other non-USF regulatory requirements through a monthly flat rated fee (capped at \$1.25) which may be adjusted on an annual basis. An adjustable flat fee provides flexibility to reflect the changes in costs of ongoing or new requirements and provides customers reasonable stability in these fees.

Supplemental Backup re Authorization of Line Items

Are CMRS carriers authorized to assess line item charges to recover costs of regulatory mandates?

Yes. The FCC provided CMRS carriers flexibility to recover such costs through their rates or to list the charges in separate line items in its Truth in Billing Order:

“...We decline at this time to mandate such requirements but rather prefer to afford carriers the freedom to respond to consumer and market forces individually, and consider whether to include these charges as part of their rates, or to list the charges in separate line items. We believe that so long as we ensure that consumers are readily able to understand and compare these charges, competition should ensure that they are recovered in an appropriate manner. Moreover, we are concerned that precluding a breakdown of line item charges would facilitate carriers’ ability to bury costs in lump figures.”

The FCC upheld this ability to recover costs through line item charges, in its Contribution Order:

“CMRS providers...will have the same flexibility that exists today to recover legitimate administrative and other related costs...through these carriers’ rates or through other line items.”

Similarly, the FCC stated in the portability proceedings that:

“[c]reating an optional end-user charge for incumbent LECs ensure that such carriers have a reasonable opportunity to recover their costs and at the same time allows carriers to forego some or all of such charges if they deem it necessary to compete in the local service market. Similarly, unregulated carriers may recover their costs in end-user charges if they choose to do so.”

Finally, with respect to E-911 costs, the FCC found that “there is no question that wireless carriers can increase their rates, if they wish, to recover any additional costs incurred in implementing E911.” *Revision of the Commission’s Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, 14 FCC Rcd 20850, 20872 (¶ 52) (1999), *aff’d sub. nom., United States Cellular Corp. v. FCC*, 254 F.3d 78 (D.C. Cir. 2001). Moreover, the Wireless Telecommunications Bureau has stated (in a decision later affirmed by the Commission) that E-911 costs may be recovered “through their charges to customers, either through their prices for service *or through surcharges on customer bills.*” Letter from Chief, WTB, to E-911 Program Manager in King County re: King County, Washington Request Concerning E911 Phase I Issues (May 18, 2001) at 7 (emphasis added), *aff’d Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Order on Reconsideration, 17 FCC Rcd 14789 (2002).